ESSAYS

ON THE ORIGIN OF

THE FEDERAL GOVERNMENT;

TENDING TO SHEW THAT IT EMANATES NOT FROM THE PEOPLE *COLLECTIVELY*,
BUT FROM THE PEOPLE OF THE *RESPECTIVE STATES*,
ACTING AS
CONFEDERATE SOVEREIGNTIES.

Selected from a series of Essays, published at various times in *The Charleston Mercury.*

"Magna est veritas et prevalebit."

"All delegated power is *trust*, and all assumed power is *usurpation*."—PAINE.

"Power is always stealing from the many to the few."

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ESSAYS, &c.

"ANIMIS OPIBUSQUE PARATI."—STATE MOTTO.

Mr. EDITOR—The debate in the Senate on Mr. Foot's Resolution, in which the question of State Rights has been incidentally introduced is replete with interest. It is, I believe, the first time that, within the walls of Congress, a question has been made, whether the Federal Government was created by the States, or by the people. To us in the South, it is a great point gained, that this discussion should have taken place; for it is only in this way, that the people of the North can have their minds fully enlightened, on a subject which hitherto they have not condescended to consider. At Washington and in the Northern circles, until within a year or two past, a person would be as little understood by talking of State Rights, as if he were conversing in the tongue of the *Hindoos*. The Message of President Jackson, is the first document from the Executive, in which the States have ever been recognized as so many sovereign members of a Confederacy.

And what, I ask, has brought about this novel state of things—this change in the politics of the country? How is it, that a new era, as it were, has dawned upon us—an era, in which, for the first time in our history, *Federal* Legislators on the floor of Congress, are gravely discussing the question, whether the *Federal* Government in its creation was *Federal*, or National? The answer is, that South-Carolina, by the movements of her Legislature, and the excitement thereby produced amongst her citizens, has presented a case, upon which, sooner or later, and for the first time, *issue* must be joined with the Federal Government, as to the nature of its *origin*, and the *extent* of its powers. Virginia, it is true, had in 1799 promulgated the doctrine of State Rights; but the people of Virginia have never taken the same interest in the question, and have never felt the same alarm at the usurpations of Congress, as is felt at this moment in our State. To the people of South-Carolina alone, is due the merit of deciding on the necessity of legislative opposition to the establishment of a Consolidated Government.

The permanent evils which such a government will entail upon our Southern country, we begin already to feel, to say nothing of those which are in store for us. But let us, Mr. Editor, endure all these evils for a while. Not a very long time, perhaps not another year will elapse, before our destiny shall be known. We shall then have to decide, whether we will tamely submit to the aggressions on our sovereignty, or manfully resist them. If the will of a majority of Congress is to be substituted for a written Constitution, the State must either be put on its sovereignty, and protect its citizens, or we must be content to reap an abundant harvest of oppression, contumely and disgrace. I, however, will not permit myself to indulge in any unmanly fears on this head. The Legislature stands pledged, that the tyranny of the Tariff shall be resisted, when all other means shall fail; and hence I infer, that the honour of the South shall not in the end be tarnished. If the Tariff Act be not repealed by Congress, our Legislature, or a Convention of the people, must, and will nullify it. There is no middle course between submission and resistance.

In the debate alluded to, our young Senator, Gen. Hayne, has acquitted himself with credit to his reputation as a Statesman, and certainly with considerable profit to his constituents. To have a drawn battle with such an experienced debater as Mr. Webster, is, of itself, no trifling compliment. But our Senator has done more. In fair and open argument, though not in coarse, bitter sarcasm, in clear elucidations of his subject, though not in chopping logic, he has beaten Mr. Webster. If he has been incautious enough to take too many positions, and Mr. Webster has dexterously turned him on some of these to his disadvantage, be it so. It is not the first time that a good general has lost some of his positions. It is to be lamented, that General Hayne should have so expressed himself as to be understood to say, that the Federal Government was a party to the compact of the Constitution; for it put it in the power of his antagonist to make a specious argument by a quibble on words. That Mr. Hayne was right on his main argument is clear.

The Constitution *is* a compact between States. Upon the principles on which our Revolution was founded, the Constitution could exist but in two ways—*either* as the result of a compact of the people aggregately with each other, as is the case of a Consolidated Government—*or* as the result of a compact between the people of the several States, as sovereign States. The latter is the construction upon which these Southern States must rise or fall. It is highly amusing to perceive how cautious Mr. Webster is, to avoid bringing the whole force of his mighty intellect upon any point, susceptible of successful defence. He is too skilled in war to hazard his reputation by attacks of this nature. And hence it is, that when we expect from him something like a regularly constituted argument to shew that the Federal Government is *National*, and not Federal in its creation, we are wofully disappointed. His argument here is little more than the *dictum* of the Supreme Court; that the Constitution declares on its front that it is "ordained and

established by the people of the United States," &c.; as if the insertion of these words in the instrument, perfectly susceptible of explanation, can controvert the history, and the facts, and the great body of reasoning which may be brought to controvert the extraordinary decision of the Supreme Court on the Bank question. Whoever is desirous of seeing an ample refutation of this doctrine, will be well repaid for his trouble by perusing the twenty-second number of "Brutus." But, as it is natural that Mr. Webster's friends should not receive as authority the opinion of a private individual, or of an anonymous writer, I will give them the name and exposition of Alexander Hamilton, an authority which they would not venture to reject, seeing that the expositions of the "Federalist" are received as authority even in the Supreme Court.

In treating of the *creation* of the Government, it is said in the Federalist, No. 39: "On the one hand, the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but on the other, this assent and ratification is to be given by the people, not as *individuals*, comprising one *entire nation*, but as composing the *distinct* and *independent States* to which they respectively belong. It is to be the assent and ratification of the *several States*, derived from the supreme authority in each State, the authority of the people themselves. The act, therefore, establishing the Constitution, *will not* be a National, but a FEDERAL act." Again: "That it will be a *Federal* and not a National act, (as the terms are understood by the objectors) the act of the people, as forming *so many independent States*, not as forming one aggregate nation, is obvious from this single consideration, that it is to result *neither* from a *majority* of the people of the Union, nor from that of a majority of the States. It must result from the unanimous assent of the several States, that are parties to it, *differing no otherwise from their ordinary assent*, than in its being expressed, not by the legislative authority but by the people themselves. Were the people regarded in this transaction, as forming one nation, the will of the majority of the whole people of the United States, would bind the minority in the same manner as the majority of each State must bind the minority; and the will of the majority must be determined, either by a comparison of the individual votes, or by considering the will of the majority of the States, as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted. *Each State* in *ratifying* the Constitution is *considered* as a SOVEREIGN BODY, *independent* of all others, and only to be bound by its voluntary act. In this relation, the new Constitution will, if established, be a *Federal* and not a National Constitution."

Permit me to offer a few remarks in illustration of Alexander Hamilton. It appears to me that the question now before the American public, is not as to the *source* from which Government derives its powers. There can be no legitimate source but the *people* themselves. Here we all agree. But the true question is, in what capacity did the people ratify the Constitution? The Expo-

sition of the Federalist gives the answer, viz. As the people of so many separate States. If the people, acting as Confederate Sovereignties, did not create the Government, but on the contrary, it was the people in a different capacity, how does it happen, that it was a part of the system, that the Government should go into operation, without the assent of a majority of the whole people. It did so happen, that the Government commenced its career, with the assent not only of a majority of the States, but of a majority of the people also, aggregately. But this was accidental. That the Constitution might have been ratified by a minority of the people of the United States, is certain from the mode of ratification which the instrument itself prescribes.

For instance: Suppose that New-York, Pennsylvania, Massachusetts and Virginia had been the four *dissenting* States, but the other nine, who at the time were the minority, had given their assent. Here we should have been presented with the anomaly of a people assembled to form a Constitution, and agreeing, amongst other things, that as soon as a minority should agree to it, it should be put into complete operation. The four States above named, were not only the majority at that time, but remained the majority, I believe, when there were nineteen or twenty States in the Union.

Again: The Fifth Article of the Constitution prescribes two modes in which amendments to the Constitution are to be proposed. But whether the one or the other of these modes be adopted, the amendments become valid, if ratified by the Legislatures, or Conventions of three-fourths of the States. According to the present census, (1820) the six States of New-York, Pennsylvania, Virginia, North-Carolina, Ohio and Kentucky, are the majority of the people of the United States. These six States, possessing a population of 5,272,207 souls out of 9,637,999, the total population of the twenty-four States. Should the other eighteen States choose to have another general Convention for proposing amendments to the Constitution, Congress is bound, on the application of sixteen of their State Legislatures, to call such a Convention, and any new Constitution agreed to by these same eighteen States, who are actually at this day in the minority, would be valid and binding upon the whole. At this day, I repeat, a *minority* of the people of the United States can, in virtue of the original compact, force the majority to accept an entire new Constitution, with only one exception, and that is, that under any change, the equality of the States in the Senate must be maintained, or in other words, that the Confederacy be preserved. What will Mr. Webster say to this? If the Government is not in the hands of the States, to be altered by them at pleasure, he involves himself in the absurdity of contending, that the minority of the people can, at any time, force upon the majority a government to which that majority dissents. But take the people in the opposite sense to that in which Mr. Webster considers them. Consider them as acting as so many distinct Sovereignties, which is the Carolina Doctrine, all the results then are rational and consistent. The assent not only of a

majority, but of a large majority of the States, becomes necessary to bind the minority. If the power to create, and to change, be in the State Sovereignties, there is no absurdity in the proposition, that a majority of *States*, and not of the people, should govern. It belongs to a Confederacy, that in making a government for all, the smallest State should have the same influence as the largest.

What would Mr. Webster say, if the eighteen States, the minority already named were to choose so to alter the government, (and they can do so) as to carry us back to the old Confederation? Would he say, that this act would be the act of a government of the people? What! a government of the people, in which the will of a minority is to prevail on a matter of so much importance as the change of a Constitution! If there be any one circumstance, which clearly distinguishes a government ordained by the people, aggregately, from a government ordained by the States, it is that in the one case the majority establishes the one, and in the other it is ordained without reference to majority or minority of the people, but by the will of a majority of States.

The Supreme Court in McCulloch and the State of Maryland, resorted to the strange conclusion, (pardon the expression) that because the Constitution was not ratified by the State Legislatures, that therefore it was not a Federal act, or the assent of a State given in its sovereign capacity. I will not attempt to add to what "Brutus" says on this subject. But it may not be amiss to state, that by referring to the Fifth Article of the Constitution already quoted, it will be seen, that the framers of the Constitution were not aware of any distinction as to sovereignty between the people assembled in a State Legislature, and in a State Convention, for it is provided that either mode of ratification may be proposed by Congress. "Brutus" has shown that the people are never so sovereign, as when they act in Convention.

Singular it is, Mr. Editor, that though the proposition for a new Government came from the old Congress, an act confessedly FEDERAL. Though the Convention which framed the instrument was called by the State Legislatures, another FEDERAL act. Though the instrument was submitted to the people in the different States, for their acceptance or rejection, by the State Legislatures, voluntarily and not by compulsion—another FEDERAL act. Though the people who ratified it were assembled in their State Conventions, and thus in the exercise of their atmost sovereignty—another FEDERAL act. Though the ratification was to be considered complete, without reference to the question, whether it was agreeable or not agreeable to the will of a majority of the people—an arrangement purely FEDERAL. Though the President of the Convention, by order of the Convention, in transmitting the Constitution to the old Congress, announced it as a FEDERAL Government, called it by that very name, and recognizing at the same instant, *tolidem verbis*, the sovereignty of the States. Though it has borne that name, from that period untill the present day, all the attempts to give it other names to the contrary notwithstanding. Though it is in the

power of the small States, forming actually a minority of the people of the United States, to change the Government, and thereby bind the majority—an act which no one can doubt to be FEDERAL. Though no State without its assent can be deprived of its equal suffrage in the Senate—a section in the Constitution altogether FEDERAL. Yet, strange to say, there are those who maintain that the Constitution is not a compact between Confederated States, but a Government of the people of the United States, as one entire people. Mr. Webster's talents, as transcendant as some may think them to be, cannot make black to be white. That his argument is an attempt of this kind must be manifest to all who will dispassionately look into the motives and history of the Union, the manner in which the Government was formed, and the mode prescribed for its alterations.

That the Government of the United States is the result of a compact between the people of one State, and the people of all the other States, is a doctrine full of comfort to a Southern man. On this foundation rests the prosperity, the peace and the safety of the slave-holding States. In this view, it is a point which never can be surrendered. To strike this flag, is to be struck out of our political existence. I declare solemnly that as much as I love the Union, I would not regard it as worth a thought, if it is only to be obtained by a surrender of State Sovereignty. Without some sovereign arm to protect our citizens against the evils which a Consolidated Government is about to entail upon this once prosperous, but now oppressed section of the Republic; we must year after year be content to see our foreign Commerce more and more prostrate, our industry more and more shackled and controlled, our civil policy more and more interfered with; the fires of discontent and insubordination spread wider and wider, and our State, at length, consumed and destroyed.

PATRICK HENRY.

BRUTUS.....No. 22.

No general course of proceeding can be more destructive of the rights of the States, or of the people, than that adopted by Congress, when it is about to construe its powers. Where real doubts exist, as has frequently been the case, whether any particular power claimed by implication, is within those intended to be granted by the Constitution, this body does not condescend to solicit any aid from its constituents, who are represented in the State Legislatures, but it seizes at once upon the doubtful power. Certainly this is not the course which friendship and good feeling, and even policy would dictate. The Government of the United States, notwithstanding all that has been said to the contrary, by the Supreme Court, is not a

Government of the people, in the sense in which the Supreme Court would have it. If it were, it would be responsible to the people alone, as its constituents, as is the case under every consolidated Government, and there would be no other security against usurpation, excepting the power of the people to change their rulers, in which case the minority must abide by the will of the majority. A doctrine such as is contended for, is subversive of the end for which the Union was formed. There is an inconsistency in admitting, that the people of the States, in their corporate capacities of States, have certain acknowled rights under the Constitution, which are guaranteed to them, and also, that they are so clearly recognized in the instrument, as to be prohibited from exercising their sovereignty on certain subjects, and yet that they are not to be regarded as having the right to complain of the usurpations of the Government, as if it were before heard, that those who create a delegated Government, have not lawfully the same power, to restrict it, within its limits, after it is created.

The doctrine, of the General Government being "truly and emphatically a Government of the people" which has been so often relied on, as excluding the right of the State Legislatures to protect the States against the usurpations of Congress, was first suggested by Mr. PINCKNEY, Counsel for the Plaintiff in Error, in *McCulloch* vs. *The State of Maryland*, and the Chief Justice, with his usual ability and eloquence, has placed the position in so masterly an aspect, as almost to command the universal assent of the Bar. But the position of the Court cannot be sustained. It is as unsound, as the other parts of this opinion already noticed in previous numbers. The Cousel for the Defendants in Error, in speaking of the true nature of the Federal compact, took this ground, "That the terms of the grant, did not convey sovereign power generally, but sovereign power limited to particular cases, and with *restrictive means* for executing such powers;" and further, that the powers of the General Government "were delegated, not by the people of the United States at *large*, but by the people of the respective States, and that, therefore, it was a compact between the different *States*." The Counsel here were certainly right, and the Court as clearly wrong in not admitting the position. The Constitution IS a compact between the States, and there are no parties to it, excepting the people of the different States in, their corporate capacities. The Court, it is true, cautiously disclaims the assertion, that the instrument "proceeds from the American people, as compounded into one common mass," for that would be too untenable; but still, its reasoning do artfully carry us on to the conclusion, that the Constitution does not emanate from, and is not the act of sovereign and independent States, but on the contrary, is as much the act of the people of the United States, as if they were assembled in an aggregate society, to distribute power between the Federal and the State Governments; and that all power derived from such a source, is as sovereign, as if it had remained in the hands of the people, and that all the *incidental*, as well as the *direct*

powers, are a part and parcel of any sovereignty conveyed by the instrument. Let us examine this doctrine of the Government being a Government of the people.

In a former number, has been stated, the obvious distinction between the case of a people without any regular Government, forming a Constitution; and that of a people already associated in so many separate sovereignties, who design to part with power to a common head; the Legislators, in the one case, possessing *all* power not reserved by the people, and in the other, possessing *nothing*, but what is delegated. Situated as were the citizens of America, at the close of the Revolution, there wereb ut two ways in which the people could have formed a Government. The first, was, by being assembled in the relation to each other, of individuals of *one great* political society. The second, as associated in *separate* sovereignties. Under one or the other of these situations of our community, was the Constitution formed. If the powers of the Government are not derived from the people of the United States, as individuals aggregated in a *general* society, they must then be created by the people in their *corporate* capacies, and so *vice versa*. From no other sources than these can they be claimed. Now, it is immaterial to me, which of the two modes the Supreme Court shall decide as having prevailed in 1788. If it chooses the last, we agree. If the first, it is in its own language, "a political dreamer, who is wild enough, to think of breaking down the lines, which separate the States, and of compounding the American people into one common mass." The Chief Justice, however, thinks he avoids a dilemma of this nature, by giving the idea, that though the people on this occasion were not actually compounded into one mass; yet, that in dispensing power to the new Government, they did it as effectually as if they had constituted one great community, for on no other principle, than this, can he establish the doctrine, that as to any particular power conferred on Congress, it is as supreme, as the people themselves would be on the subject; a doctrine which has been denied in these numbers. As if aware, that the assemblage of the people in their States would imply, that the ratification in this way of the Constitution, was the act of the *States*, and not of the people, he justifies this mode of ratification as the most proper, under the circumstances. "They acted upon it in the only manner in which they could act safely, effectively, and wisely, on such a subject, by assembling in Convention." It is true, adds he, "they assembled in their several States; and where else should they have assembled? If they act, they must act, of course, in their States. But the measures they adopt do not, on that account, cease to be measures of the people, or become the measures of the State Governments." The answer to be given here, is, that the Constitution might have been ratified, (if the Convention had so chosen) in two other ways; but neither of them would have comported with the general sentiments in and out of the Convention, that the new Government should be *Federal*, and not National in its creation. What, for instance, could have prevented the Con-

vention from proposing, that the State Legislatures should divide their States into Election Districts, upon some equitable plan agreed upon, and that each district should send a deputy to a General Convention; or, that the people in the different States should give their assent, or dissent, by voting in districts by a general ticket, and that in either case, the votes of three-fourths of the whole, should be an acceptance of the Constitution. To these *last* modes there could be no objection, because the Constitution, whether the subject of debate, or not, was to be accepted, or rejected in *whole*. After Napoleon had assumed the imperial purple, he was desirous to know whether his subjects regarded him as an usurper, and he opened books in every part of his dominions, that Frenchmen might inscribe their assent or dissatisfaction of his conduct. This was voting by general ticket, though not by ballot.

It would be no answer to say, that either mode here proposed, would have been impracticable, because the *very fact of its being* impracticable to obtain the assent of the people at large, would be *conclusive to shew*, that the assent, if given in *any other* way, could not *possibly* be the act of the people, but of the States. That the people of the United States were regarded as acting in their sovereign capacities, as separate States, when they ratified the Constitution, clearly appears from the rule laid down in the instrument itself, for its ratification. The assent of a *majority* of all the inhabitants of the United States was not made indispensable, which certainly would have been the case, had the design been that the Constitution should not emanate from the *States*. Under such a view, it might have so happened, that the ratification might not have been complete, though nine States should have assented. Four large States rejecting the Constitution might have had a greater population than the other nine. For instance, Massachusetts, New-York, Pennsylvania, and Virginia. These four States, at the first census in 1790, one year after the Government went into operation, had 56 members out of 105, that number being the whole representation in Congress—they were the majority of fifteen States. At the second census in 1800, the same four States possessed 74 out of 141 members, and formed the majority of seventeen States. At the third census in 1810, they formed exactly one half of twenty-three States.

Amongst all the modes of controverting the soundness of a position, there cannot be one more effectual, than to shew the manifest absurdity to which its results would lead. If the Supreme Court is right, that the ratification was the assent of the people, and not of the States, the Convention is chargeable with the absurd proposal of having a Government, which is to bind all the people of the United States, to be put into operation, as soon as a minority of the same people should ratify it. Now, on the one hand, if we consider the Constitution as emanating from the State Sovereignties, and not from the people, there is no difficulty whatever, in any view of the subject. The mode proposed by the Convention, was not only the best mode, but it was the only mode, by which the people,

acting as the people of separate States, could give their free and unbiassed assent to the compact.

There was a manifest propriety in the Convention's submitting the Constitution to the assent of the people, in their State Conventions, and not to the State Legislatures, if it was the intention, that the new Government was to be received from the States. It is only when the people are assembled in their Conventions, that they are exercising their utmost power of sovereignty. At no other time do they wholly act in their sovereign capacity; for it is then that they can *take away* what they before *gave*, and *give* what they had previously *retained*. In the State Legislatures, the people, it is true, exercise the sovereign power of making laws, but the power is limited by the Constitution. The Court says, "from these Conventions the Constitution derives its whole authority." Strange then it is, that at the very moment when the people in the different States, are acting in the only possible known way of exercising complete sovereignty, that this moment should be selected by the Court, as an occasion for considering their acts, not as the acts of Sovereign States, but as those of the people of the United States at large.

It is very plain, from the reasoning of the Chief Justice, that he regards the State Legislatures, or the State *Governments*, as he also terms them, *essentially*, as the *State Sovereignties*. His words are— "The assent of the States, in their sovereign capacity, is implied, in calling a Convention, and thus submitting that instrument to the people. It required not the affirmance, and could not be negatived by the State Governments. The Constitution, when adopted, was of complete obligation, and bound the State Sovereignties." For the want of a distinction between a State Legislature and a State Sovereignty, it is not to be wondered, that the Court should deny the Constitution to be the act of sovereign and independent States, as States. There is a difference, and a very material one, between a State Legislature and a State Sovereignty. To speak of them as the same, is to confound two things which are opposite. It is to call the people the Government, and the Government the people. True State Sovereignty, is that supreme power in a State, which is without limits. It resides no where but in the people. To the people it belongs, as founded on the "original inherent **RIGHTS OF MAN.**" The State Legislature, on the contrary, is nothing more than that portion of the supreme power, which the people have thought proper to delegate, for the purpose of making the necessary laws, to regulate society at home and intercourse abroad. A State Legislature is not even the State *Government*, but only a portion of it. If the State Legislature, which is only a part of the Civil Government of the State, be State Sovereignty, then the Executive and the judicial powers are also State Sovereignty. The only possible case in which a State Legislature could be pretended to be a State Sovereignty, would be, where, by the terms of a written Constitution, all power whatever is vested in the Legislature, nothing being reserved to the people. Such a written Constitution would be com-

prised in one or two short sentences, and would be a novelty. We have no such in America that I know of.

As we now see the essential difference between the Legislature of a State, and that supreme power, called State Sovereignty, we shall readily perceive, in the rise, progress, and final completion of the Federal Constitution, that every thing which *was* done, was in *perfect accordance* with those notions of Government, which we term republican, and that had it been otherwise, the rights of the people, as *States*, would have been violated.

The necessities of the people, in every State, called for a change in the structure of the existing Governments. How was this change to be effected? By the State Legislatures? Certainly not. The State Legislatures had no right to form a new Constitution. They were competent to form the Confederation, for that was in nature of a league, and is within the scope of all legislative power to enter into such a compact. But, when a Constitution is to be formed, Governments are not to be the actors in any way. According to Mr. PAINE, in his "RIGHTS OF MAN," "Government has no right to make itself a party in any debate, respecting the principles, or modes of forming or changing Constitutions. It is not for the benefit of those who exercise the powers of Government, that Constitutions, and the Governments issuing from them, are established. In all these matters, the right of judging and acting, is in those who pay—the people; and not in those who receive. A Constitution is the property of a nation, and not of those who exercise the Government."

But though no one State Legislature could place its own people under a new form of Civil Government, in which Government they were to be associated with the people of other sovereign States, yet they had a right to submit proposals to that effect, which they did by sending deputies to the General Convention. The work of the Convention being finished, the next inquiry was as to the mode of ratification. There were but two modes proposed in the Convention, by which the people were to be bound as the people of sovereign States. The first, to have the assent of the State Legislatures. The second, of the people of the States in State Conventions. The latter was preferred. Had the Convention considered that the assent of the State Legislatures could give a binding efficacy to the new Constitution, it would have betrayed an extreme ignorance of the true origin of all Civil Government, and of that inherent right of the people alone, to make a Constitution. The assent of the people in Conventions, then, was the only way in which their assent could be obtained, as sovereign and independent States. They do assemble. In each State, a majority of the people decide for that particular State. The vote is transmitted as one vote out of thirteen. Delaware, the *smallest* State in the Union, has the same influence in making up the majority, without which the Constitution cannot operate, as Virginia, which is the *largest* State. And yet we are told by the Supreme Court, that the binding efficacy which the Constitution received in these proceedings, was not the

act of the States, as States. But let us, for the sake of argument, pervert terms, and say that Legislatures *are* States. Still the acts of the Convention, in such a view, must substantially be regarded as the acts of the States. That sovereign political body, which requires another body to decide for it, any question which it has the power of itself to decide, is certainly the power that does the act, and not the substitute. *Qui facit per alium facit per se.*

Suppose, that instead of the present Constitution, Mr. PATTERSON's plan had been adopted in the Convention, which was so to have enlarged the power of the old Government, as to give it the additional power of imposts and stamp duties, and to regulate commerce, and to have a Federal Executive, and a Federal Judiciary, &c. This Government, in the words of the Court, would "be the Government of all. It powers delegated by all. Representing all, and acting for all." But would any one say, that because it was to act directly on the people, that, on that account, it must be national in its creation. The manner in which a Government is ushered into existence, and the nature of that Government after it is created, are two distinct things. The mode in which a Government is to operate upon the people, has really no more to do with an inquiry, as to the source from which it emanates, than the manner of its origin has to do with questions as to the operation of its powers. The only question is, who ratified it. The people, it is true, did it. Who else could ratify it. But did the people ratify it as the people at large. The answer has been already given. The votes were not a portion of the aggregate votes of all the individuals in the United States, but the vote as one people. It was a single vote. Who, but a State can give a single vote? What is the characteristic of a Confederacy of States, according to our own experience? The voting by States. If South Carolina, in giving her assent to the compact, votes precisely as she did in the Confederation, her influence being one thirteenth of the whole, is it not absurd to say, that this ratification is not a Federal act? The Court is at some pains to confute the plain proposition, insisted on by the Counsel for the State of Maryland, that the Constitution is a compact between the States in their sovereign capacities. The Government, says the Court, "proceeds directly from the people;" "is ordained and established" in the name of the people; and is declared to be ordained, "in order to form a more perfect union." And what then? Who are the people here meant? The people of the United States as one entire nation, or the people of the Thirteen States. The title or caption of the Constitution, as it is presented to the Conventions, announces it, "as a Constitution framed for the *United States* of America, by a convention of deputies from the States of New-Hampshire," &c. If an argument is to be drawn from what immediately follows in the preamble, "We, the people of the United States, do ordain and establish this Constitution," I should suppose, the people here meant, must be the people of those thirteen *named* States of America, for which States the Constitution was formed, to wit, New-Hampshire, &c. The Government being

a compound Government, it would be difficult to say how it could, upon the whole, be better expressed, supposing that its adoption was to be the act of independent States. Again as to union.—What is meant by "more perfect union," more than an union of sovereign States upon better terms than the Confederation afforded. The Court will say, that a Consolidated Union was the end in view.

The best way to put an end to all argument, is to ask ourselves this simple question—Supposing that it was the real design of the whole Convention, that the new Constitution was to be the act of the several States, as States, could it have adopted any other legitimate mode, than that of submitting the instrument to the State Conventions? This question must be promptly answered in the negative, unless we design to maintain the absurdity, that a State Legislature can make a Constitution, which is to associate its people in Civil Government, with the people of other States. If then, it is clear, that in a State Convention alone, the assent of a people of a State, as a State, can be given to a radical change in the structure of the Government, so as to bind the people of that State, the very circumstance of calling the Convention, incontestibly proves, that its required ratification was to be a State act. It is a loss of time to attempt to prove what is so plain.

That the Government did not emanate from the people, excepting in their sovereign capacities, as separate States, appears also to be the exposition of the Federalist. In speaking of the real character of the Government, considered in relation to the *foundation*, on which it is to be established, it is said, (Federalist, No. 39) "On the one hand, the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but on the other, this assent and ratification is to be given by the people, *not as individuals*, comprising *one entire* nation, but as composing the distinct and *independent States*, to which they respectively belong. It is to be the assent and ratification of the several States, derived from the *supreme* authority in each State, the authority of the *people* themselves. The act, therefore, establishing the Constitution, will not be a National, but a FEDERAL act." The Federalist goes on to say, "That it will be a Federal, and not a National act, (as the terms are understood by the objectors) the act of the people, as forming *so many independent States*, not as forming one *aggregate* nation, is obvious from the single consideration, that it is to result, neither from a *majority* of the people of the Union, nor from that of a majority of the States. It must result from the *unanimous* assent of the several States, that are parties to it, *differing no otherwise from their ordinary assent*, than in its being expressed, not by the legislative authority, but by the people themselves. Were the people regarded in this transaction, as forming one nation, the will of the majority of the whole people of the United States, would bind the minority, in the same manner as the majority of each State must bind the minority; and the will of the majority must be determined, either by a comparison of the

individual votes, or by considering the will of the majority of the States, as evidence of the will of a majority of the people of the United States. Neither of these rules has been adopted. Each State, in ratifying the Constitution, is considered as a SOVEREIGN BODY, independent of all others, and only to be bound by its voluntary act. In this relation, the new Constitution will, if established, be a FEDERAL, and not a National Constitution."

Having thus clearly shewn, as I conceive, that the Counsel for the Defendants in Error, were right in saying, that the Federal compact was the act of the State Sovereignties, and that the Supreme Court was decidedly wrong in denying the position, it may not be unprofitable, to correct some popular errors on the subject of Civil Government being considered as a compact; as on the correction of these, a very important axiom is hereafter to be maintained, to wit, that to the State Legislatures, as States, and not to the people at large, as its constituents, is Congress responsible for the abuse of its powers. These Legislatures have the unquestionable right to keep Congress within the limits of its prescribed powers.

It is an erroneous idea, that wherever Civil Government exists, that there is any compact between the *people* on the one side, and the *Government* on the other, and that the Government in consequence, has any rights, except when it acts for the people. This subject is placed in an admirable, and an incontrovertible point of view, by THOMAS PAINE, in his "Rights of Man." In the American Constitutions, of which he was treating, he maintains there is no such idea. The compact, says he, in "each instance, was that of the people with each other, to produce and constitute a Government. To suppose that any Government can be a *party* in a compact, with the whole people, is to suppose it to *have existence* before it can *have a right to exist.*" In the Confederation then, we must admit, that the compact necessarily was that of the people of the different States, with each other, in the relation of independent communities. In the Federal Constitution, it is a mistake to suppose, that the relation is the least altered, because the people themselves met, to make the compact, instead of doing it through their Legislatures. The act of ratifying the compact by such a mode, so far from weakening, indubitably strengthened the ratification, as an act of an independent State, for it is done by the people themselves, in their most sovereign character, in which they can possibly be recognized. In no State in this Union is the sovereignty of the State perfectly represented by its Government. The people may constanly be in the exercise of all the legislative, judicial and executive powers of the Government, and yet they may not be using their utmost sovereignty. In every American Constitution, there are powers reserved to the people, which Government cannot exercise. It is in Convention alone, that State Sovereignty is without limits or control.

The Constitution then, being a compact between the people of the different States, as States, and not as individuals, it results, that United States' Government is nothing more than a great trustee,

under an irrevocable power of attorney, to perform certain duties, or to execute certain trusts, prescribed to it by the States. Government, says Mr. Paine, "is not a trade which any man, or body of men, have a right to set up and exercise for their own emolument, but is altogether a TRUST, in right of those, by whom the trust is delegated and by whom it is always resumable. It has of itself NO RIGHTS. They are altogether *duties*. All power exercised over a nation must have some beginning. It must be either delegated or assumed. There are no other sources. ALL DELEGATED power is TRUST, and all assumed power is USURPATION. Time does not alter the nature and quality of either." If this be not truth, in the name of reason, what shall we call by that name. Let us then apply this doctrine to our subject. The power of the Federal Government, we all admit, is a delegated power, and all delegated power, we must as freely admit, is a trust. It is the State Sovereignties who confer this delegated power, and these also are the only parties to the Federal compact. In this view, what becomes of that doctrine so often advanced, that Congress is not amenable to the States, as State Sovereignties, for an abuse of its powers. Was it ever heard, that the parties who create the trust, are not to see that the purposes of the trust deed are fulfilled. Who else is to complain, and to take the measures to keep a trustee to the proper discharge of his duties, if it be not the constituents of the trust estate. Suppose that the directors of any public trading company were to violate certain fundamental articles of covenant between the individuals who may compose such a company, and are so supported by the majority of the stockholders, to the injury of the minority; what is the remedy? A Court of Justice, by its writ of *prohibition*, or *mandamus*, or *injunction*, or other process, arrests their illegal proceedings. The only difference between the abuse of a private trust, such as has been stated, and that of the great public trusts, contained in delegated sovereign powers, is in the nature of the remedy to be applied. For the first, there are impartial tribunals provided in all regular Governments. For the other, as regards the anomaly in the American plan of Government, it results from the very nature of the Government, that no such tribunal can be found, and that relief must be sought by other means. For who is to appoint such a tribunal. Not, surely the delegated Government. It would be to consent to allow the trustee, not merely to appoint the arbiter, who is to judge whether he has or has not abused his trust, but to name for that purpose, his own servants, who are fed and supported by him. In this view, the States who constituted the Federal Government can never consent, that the United States' tribunals should decide whether the Federal Government had or had not usurped its powers. Such an assent would involve the absurdity just mentioned. It is to make a party the sole judge in its own cause.

I am aware that it will be said, that the mode of settling all such questions is specified in the compact, and is a part of it; and that the *second* section of the *third* article of the Constitution, makes the

United States' Judges the arbiters in all disputes between the States and Congress. I think not. The only part of the section which can be enlisted on the side of such a construction, is that which extends the judicial power of the United States to all "cases arising under this Constitution, and the laws of the United States;" and also that which speaks of "controversies to which the United States shall be a party." I have always thought, and do believe, that had this provision been for any other purpose, than to enable Congress to protect itself against any exercise of power by the States, prohibited to them by the Constitution, or intended to embrace great and vital questions of sovereignty between the States and the United States, as to constructive powers, as well as cases of *meum* and *tuum*, that it would not have been so loosely expressed. This view is considerably strengthened by the circumstance, that on the introduction of these passages, on the 27th and 28th of August, as amendments to the reported draft of the Constitution, there was no opposition, which can only be accounted for on the supposition, that it was intended to embrace the claims of individuals against the United States, and *vice versa*. We cannot imagine, that so important a provision as that by which inherent rights of States were to be taken away, could pass unnoticed, if it were understood to refer to disputes about sovereignty; but we can readily believe, that if the supposed controversy was to partake of the general nature of the cases provided for in the same section, which are pecuniary suits at law and equity, that there could be no objection. "Controversies between two or more States." This part of the clause was well understood, and the same reason which might warrant the insertion of this last power, to adjust ordinary controversies between two States, would apply to the exclusion of the idea, that important vital rights were to be the subject of cognizance in the Federal Courts, under the amendments. A State differing with a neighbouring State, *might* be perfectly willing to leave a dispute about boundaries, &c. to the decision of the United States' Courts, because, as between such parties, the arbiter must be impartial, and this would be the case, in all the other cases in the section, allotted to the cognizance of the Federal Courts. But the case is materially altered, when the question to be propounded to the servants of the Government, is, whether their masters have or have not usurped their powers. It is requiring too much of frail mortals, (unless the usurpation be outrageously gross) to ask of them to decide in the affirmative. It is unreasonable even to require of them, that if they have any honest doubts on the subject, to throw those doubts into any other scale, than that of the Government, to which they are attached from interest.

The absurdity and the danger of any such stipulation on the part of the States, is too apparent to admit of the idea of its ever having been intended, and unless it can be shewn as clear as the sun in the firmament, that such was actually the intention of the clause, such a construction ought to be resisted by the States, upon the principle of self-preservation. They have no other recourse. If we, how-

ever, look into the journals of the Convention, we shall be satisfied that it never once entered into the minds of the members to provide for any other disputes, than such as might occur between States, as to boundaries or territorial jurisdiction, or between a State and Congress, where the former might be disposed, (as was feared) to pass laws, clashing with the expressly delegated powers of Congress. It was anticipated, that disputes between States would occur, respecting territorial jurisdiction. In the Confederation, a mode of adjustment had been provided. In the first draft also, of the Constitution, proposed by Mr. PINCKNEY, a power for this purpose was invested in the Senate. In the reported draft of the Constitution by the Committee of Detail, the same power is invested in the Senate. But in neither of them, nor in *any* of the *five* plans submitted to the Convention, is there *any provision* proposed for disputes, involving rights of sovereignty, between the *United States* and any *one State*. None of the proposed plans, as to the settlement of State disputes being agreed to, it was finally judged proper to make the Federal Judiciary the tribunal.

There was a strong apprehension in the Convention, that the State laws would interfere with those of the National Legislature, and it was upon this expectation that Mr. MADISON advocated Mr. PINCKNEY's proposition, that a Congress should have a negative upon all State laws, and because he moreover believed, "that no tribunal could be found, who could impartially determine the line of State powers, when drawn in doubtful cases." This proposition having been thrice lost in Convention, twice on the discussion of Mr. RANDOLPH's resolution, and once again on the 23d of August, it became necessary in the minds of some members, that provision should be made to prevent the States passing laws, which "might infringe the powers *exclusively* delegated to Congress," for that is the expression in Mr. PINCKNEY's draft.

The Committee of Detail not having made any such provision in their reported draft of the Constitution, because it would have been repugnant to their instructions, and the proposition having been repealed on the 23d of August, as an additional enumerated power, there arose a necessity of a different phraseology of the judiciary clause, when it was under consideration. The judicial power was then extended "to all cases in law and equity, arising under this Constitution and the laws of the United States," and also to "controversies to which the United States shall be a party." The provision evidently was intended for the cases which might arise from the States interfering with the powers delegated to Congress. It is impossible to read the secret journals of the Convention, without being struck with the unfounded fears which at that day seized the bosoms of the majority of the members, as to the danger of the State Legislatures, constantly embarrassing the new Government. Thirty-five years experience has demonstrated that all their apprehensions were as "the baseless fabric of a vision." To prevent the evils which they anticipated from this source was the cause of those very amendments to the judiciary clause, which have been sup-

posed to give the United States' Courts cognizance of all disputes as to the extent of the constructive powers of Congress—however vitally such disputes might affect the sovereignty and very existence of some of the States. Mr. Hamilton, (*Federalist, No.* 80) sustains this very motive for introducing the above amendments. In speaking of the necessity of some constitutional mode of enforcing the observance of the restrictions on the State Legislatures, he says, that "the power must either be a direct negative on the State laws, or an authority in the Federal Courts to overrule such as might be in manifest contravention of the articles of Union. The latter appears to have been thought by the Convention preferable to the former, and I presume will be most agreeable to the States."

In speaking, however, of the motives of the Convention, as to the above amendments to the judiciary section, I am not to be understood to say, that it is altogether clear, that even the construction here given or admitted, is not too liberal, but merely to contend, that whatever the words may mean, they could mean more than to provide a substitute for that favourite measure of some members, a negative upon such State laws as might be passed in repugnance to the express prohibitions in the Constitution. There is a view of this subject, which at this moment strikes me with some force, and which would shew, notwithstanding the preceding reasoning, and Mr. Hamilton's exposition just quoted, that all these amendments might have been intended simply to refer to pecuniary claims, preferred by or against the United States, and also, to all suits which must necessarily or ordinarily arise between one citizen and another, out of the general proceedings of the Government, and the conduct of its officers, agents or servants. The only way to come at the intentions of the Convention, is to go up to the fountain head for their first meaning, and to observe whether that meaning was altered, and how far it was altered by its subsequent acts.

In Mr. Randolph's sixteenth resolution, the outline of the power of the judiciary is thus given. "To extend to cases, arising under laws passed by the General Legislature, and to such other questions as involve the *national peace* and *harmony*." That by the words, "national peace and harmony," was intended no more than disputes between States as to territorial jurisdiction, and by the words, "cases arising under laws of the United States," the clashing of jurisdiction which might take place between the Federal and State Judges as to admiralty and other jurisdiction, as to piracies, captures, &c. is evident from the simple, and yet important fact, that the Committee of Detail, who heard all the debates, certainly understood the resolution in this sense. In their reported draft of a Constitution, they make provision for the settlement of disputes between States, and for other cases connected with the national harmony, but none whatever as regards collisions between the Federal and the State Governments, as to powers. We cannot, therefore, believe that under these expressions, "national peace and harmony," the Convention ever did intend to include such

important disputes as collisions about sovereignty. The most rational construction would be, that the cases *arising* under legislative *enactments*, were such only, as must ordinarily occur, under every Government, and no others. The subsequent amendment to this clause, on the 28th of August, by adding the words, "at law and equity," seems to establish this exposition, and as some cases of pecuniary interest probably might occur under the "Constitution" as well as of the laws of the United States, this may have been the cause of the addition of that word "Constitution" also to the section. The claim of Massachusetts, against Congress, for militia claims during the late war, would have been a case of law and equity, arising under the Constitution, had Congress not have allowed these claims. Other instances might, no doubt, be cited. In the Virginia Convention, and North-Carolina Conventions, (I have not seen the debates of any other) when this clause was under consideration, great as were the objections, yet no speaker anticipated the evil of any such construction, that the judicial power was to decide questions of jurisdiction and sovereignty between the United States and any particular State. The whole apprehension was, that in process of time the Federal Judiciary would sweep to its jurisdiction, almost all the subjects of litigation, so as finally to leave to the State Courts nothing to do. Their fears are likely to be realized by a decision of Judge STORY's in *Delovio & Boit.* The introduction of the words, "controversies, to which the United States shall be a party," it is true, would countenance the supposition, that questions respecting the boundaries of power, were contemplated as fit for the cognizance of the Judiciary. But on the other hand, it is extremely difficult to conceive, for the reasons already given in this and a previous number, that disputes about vital sovereignty were intended to be referred to any such tribunal. A sovereign State can never be presumed, in any compact which it enters into with another State, to yield inherent rights of sovereignty. The absurdity and the danger of any State agreeing to entrust the decision of disputes about sovereignty, to an arbiter to be appointed by the opposite party, is the best of all arguments to shew, that no such intention was ever entertained. What would become of the States, if, under indefinite phrases in the Constitution, they could, in this way, be deprived of all their rights.

I have not forgotten, that as regards disputes relating to the boundary between the Federal and the State jurisdictions, Mr. HAMILTON considers the Supreme Court as the tribunal, which is established for the purpose of ultimately deciding them, and in his thirty-ninth number, he justifies "such a tribunal as essential to prevent an appeal to the sword, and a dissolution of the compact." But against this short and transitory, or accidental notice of the subject, is to be opposed the fact, that whenever he has occasion to answer objections to the Federal Government, as a Government likely to usurp power, and thus to endanger public liberty, he never once suggests, that the remedy for such a state of things is to be sought elsewhere, "than in an *original right* of self-defence, which

is *paramount* to *all positive* forms of Government." He calculates, invariably, that "all schemes of usurpation, if attempted by the national rulers, will easily be defeated by the State Governments."

Nor ought there to be any other remedy. It is proper that a tribunal should be at hand to decide controversies relating to the boundary of jurisdiction between Congress and the States, because all parties might be willing to have the opinion of a such tribunal, as long as it shall, by its proceedings and the conduct of its members, inspire mutual confidence. The exposition of any particular clause in the Constitution, by such a tribunal, might have so much weight, as to have the effect of preserving the harmony between both Governments. It is in this view, and in no other, that the Supreme Court ought to be solicited for its opinion. It might also happen that the decision of the Court might be right, upon all the principles of construction, by which Courts are usually governed; and yet, there may be circumstances, which would not warrant an obedience of the States to its decrees. The General Government might so usurp power, as to be beyond the reach of any ground on which a Court could pronounce its acts unconstitutional. In a former number I noticed the Tariff as an instance. The "Woollens' Bill" is perfectly constitutional, if the Court shall be called upon for its opinion in relation to it, because it must decide according to the provisions of the Bill, and cannot enter into any notice of the motives of the Congress for passing such a Bill. If it should pass, it will, in its shape and all its provisions, be an act simply "to lay imposts," which is within the enumerated powers of Congress, whilst its design would be to promote a great local interest in particular States. Here is a case in which a State would commit an act of SUICIDE, were it to admit of the principle that for so gross a violation of the spirit of the compact it was to seek no redress bnt in the Courts of the United States. Other illustrations might be adduced. Let one suffice. According to the *letter* of the Constitution, the compact may at any time be altered with the assent of three-fourths of the States. There is but one single restriction now existing on the power to amend the Constitution, which is, that the *equality* of suffrage in the *Senate* shall be preserved. Supposing now, that eighteen States were willing that the Constitution should be so altered that a power be conferred on Congress to promote the objects of the Colonization Society, and to purchase and remove gradually out of the United States, the slaves of the Southern States. This proposition is actually suggested in the last Philadelphia Quarterly Review—or suppose the proposed amendment be a declaratory clause that Congress has the right to abolish slavery under the Constitution, on compensation being given to individuals. Other instances might be added, such as amendments which effect a radical change in the Government as to its structure, so as to make it any thing but what the States designed it to be. What is there in the *letter* of the Constitution to prevent all these things being done. Were the Supreme Court called upon to decide as to the right to make alterations, would it

not be compelled to say, that by the terms of grant there is an unlimited power to amend, excepting in one solitary case, and moreover, might it not also call to its assistance that refined metaphysical doctrine of its own Chief Justice, that "a power to create implies a power to preserve," and from that power to create easily deduce "a power to *change*." In such an emergency as this, would any one doubt the right of the six dissentient States to dissolve the compact, on the simple ground that an alteration, either in the fundamental polity of a State, or in the Republican principles of the Government, would be a gross violation of the spirit in which the Constitution was formed. No one can doubt it.

This subject might be pursued almost without end. I have already stated that in all instances of abuse or usurpation of power on the part of Congress, the State Sovereignties being parties to the compact, it is their right to remonstrate and to resist. But some say, that according to my own previous reasoning, it is the *people* in *Convention* who have this right, and not the State Legislatures, who are not the people, but only a *portion* of the sovereign power of the State. This objection is thus removed:—Under the State Constitutions, all power which is not reserved to the people in a bill of rights, or by positive limitations, is invested in the State Legislatures. Not so in the United States' Government. In the exercise then, of that portion of the supreme power which is conferred on a State Legislature by its Constitution, that Body possesses, without a single exception, every right not expressly forbidden, which the people themselves could possess. Amongst those rights, stands pre-eminently the sovereign right of demanding that all compacts entered into with other States, be faithfully fulfilled, and of adopting sueh measures to enforce such compacts, as in their wisdom they shall judge fit. If the people in South-Carolina, in their collective capacity as a State, be a party to the Federal compact, (as is the fact) they have the undoubted right to call the General Government to account for the abuse of its delegated powers. If the people have that right, the same right belongs to the Legislature, that Body having in this particular, all the rights, and having imposed on it all the duties of the people. And it is a right which I trust they will not only exercise, but so use it as to preserve the State.

But view the compact as we will. Let us regard the Federal Government as it really is, a TRUST; or let us regard it, as has been suggested, as a deed TRIPARTITE, in which the people *en masse* are one party, the people as States another, and the people in one great political community as a third; or let us call it a CONFEDERACY of States; or by any other name we please, there is yet one feature in the system which every man in the United States has always before his eyes, and that is, that we are governed as one entire nation, and at the same time exist as twenty-four separate sovereignties, and that a common friendship, after all, is the great bond of our Union. On a difference of opinion then, as the true meaning of any particular provision in

the compact, the same course ought to be adopted as would be proper between one friendly nation and another. As in the latter case a conference would be proposed before any step would be resorted to, as likely to lead to serious misunderstand or war; so in the case before us, Congress, before it assumed any great substantive power, such as the power over Internal Improvements, ought, (under that provision in the Constitution which empowers it to propose amendments) to have submitted to the State Legislatures, the question, whether such a power belonged to the States or to Congress, and thus by soliciting their aid and advice as to the true intent of all parties, it would have gained for itself the confidence and the support of the State Legislatures. To both, the power cannot belong, for I have demonstrated, I trust, satisfactorily in my nineteenth number, that there can be no *division of sovereignty* on the subject of Internal Improvements. If Congress be not *exclusively* sovereign as to *every* purpose for which the Federal Government was created, it cannot be sovereign at all. The concurrence of authority in legislation is only as to taxation, which is only a *means* of promoting the objects for which *Civil Government exists*, and not itself an *end* or object of Government. It cannot exist on any other subject. The United States' Government is supreme within its sphere of action, and the States equally sovereign as to their reserved powers. This is the decision of the Supreme Court, and cannot be confuted. The fault of the Supreme Court is not that it decides the United States' Government to be sovereign for the great purposes of its creation, but because it confers on Congress, as means of executing those powers, contrary to the spirit of the league, powers which have no *necessary* and *appropriate* connection with those *expressed* objects, to which their legislation is expressly confined by the terms of the instrument.

Every patriot and friend to his country must freely admit, that where there are two rules of interpretation, or two modes of adjusting difficulties, *that* must always be the best and the safest, from which no inconvenience or injustice can arise to either party. The difference between the two modes is this—Under the construction here contended for, there is scarcely and object of any consequence to the States generally, which may not be fairly referred to some one or other of the many enumerated powers, and therefore, the measure may be constitutionally adopted. Should it so happen that there may be an object for which the Constitution has not provided, if such an object be one of *general* and primary interest, the instrument itself has provided the means by which it may be accomplished. An amendment to the Constitution may at any time be proposed, and if the new power asked for be necessary to war, foreign negotiation and commerce, (those great ends of the Union) there is no fear but what three-fourths of the States will agree to the amendment. The people will always have intelligence enough to discover their true interests. If the assent of three-fourths of the State Legislatures, for this purpose, cannot be obtained, it would prove that the power ought not to be exercised. It

is for the happiness of the *people* of the States that the Federal Government is ordained, *and not for its own sake;* and the people, heard through their State Legislatures, are the best judges whether any new contemplated measure will or will not augment their happiness. If the power be necessary, and it be refused, the people will suffer as they ought to suffer. By this construction, the Federal Government will be the sun, or centre of a great political system, diffusing its light and warmth to all the State Governments which harmoniously and beautifully revolve around it, and thus the order and design of the Convention will be preserved. But, under the opposite course, which is the one adopted by Congress, viz. that of seizing upon power in all doubtful cases, a discretion is given to select objects for legislation, to which there is no affixing any limits, and the necessity of which may not be seen; a door may thus be opened for extravagance and waste in the public expenditure; the people may be burthened with excessive taxation; sectional interests may be promoted by the majority, under the pretext of their being national; sectional *jealousies will be fomented;* an habitual disregard to the State Legislatures will be encouraged; no amendments to the Constitution will be thought of; and strifes and contentions between the States and Congress will increase and multiply, until by some great convulsion, we shall all be resolved again into our original elements. Are we not, under the intemperate measures of Congress, rapidly approaching such a crisis?

BRUTUS.

Mr. Editor—The interest taken by the people in the late debates of the Senate, as well as the course of that debate, prove very clearly that the public mind is uneasy at the operations of the General Government—dissatisfaction does exist—our situation is uneasy and perilous—great national questions have arisen—and our feelings are kindling with the progress of the discussion—in every mind there lurks the cruel apprehension of a fearful coming on of deep and wide commotion.

Why is it, that in the very hour of national peace, there is not universal tranquillity? What hath brought this people from a state of full security, to the present awful appearance of things? A few years ago we all reposed with satisfaction under the shadow of the General Government—we had almost forgotten that such things as State Rights and Federal Powers ever were discussed—the very parties once arrayed upon these questions had passed away, or "else like kindred drops had mingled into one." But now, the public mind is agitated, and we are forced to inquire why are we thus cast down, and why are we thus disquieted? Whence has arisen this deep-toned sensibility—from speculative evil or real calamity? It arises, Sir, from both. Throughout the whole extent of this

empire, there is an anxious, feverish pulsation. In the North, shipping is declining—imports diminishing—property depreciating. In the South, staples falling—exports lessening—lands running to waste—and large estates sinking into ruin. Among us, and around us, murmurs and confused noises are gradually rising—and unless the causes which incite them be soon removed, will progress and gather force, until the voice of a whole people shall be lifted up. We have suffered much—we have more yet to suffer—and unless we speedily settle the limits of our Federal Government, calamity more grievous than we have yet felt, must and will come. We are all attached to the United Government—yet we are all in dread of its vast powers—we feel that it oppresses us—and we dread that it finally will crush us. It is in vain to say, "sufficient unto the day is the evil thereof." A people fit for self-government, cannot be regardless of contingent evils. Doctrines are advanced subversive of State Rights—checks and limitations upon Federal Power are swept away by the fell doctrine "that the General Government is not a Government of States united, but of the people collectively in the United States."

Upon this doctrine is suspended our rights—upon the decision of this point hangs the liberty of the States, and the integrity of the Republic; for if it be decided that this is a Government of all the people and not of the States, then the majority of that people are the governors, and the minority are absorbed—having no redress against the exercise of any power but in the justice or clemency of their rulers. The Constitution, so much spoken of as a guarantee of liberty, is of no more avail for the protection of private rights and individual property, than was the Constitution of Venice in the proud day of that Republic. It answers *this* and no other purpose—it serves as a plan for Government—a Republic rather than a Monarchy. If this be a Government of the people collectively, it must be a Government of the majority; and a greater absurdity does not exist, than a limitation upon the powers of a Republican majority in a Consolidated Republic. A Constitution, Sir, was never made for a majority—they have the power, and with the ability to protect themselves need not the aid of a Constitution. It was made, Sir, for a minority—who, not having the physical power, needed all the protection that parchment and contract could afford. What is the value of this protection time only can shew. But at all events one thing is clear: If this be a Government of a collective people, a majority is absolute; and, however grievous our burdens, there is no constitutional redress. If this position be once conceded, it is impossible to escape from Mr. Webster's conclusion—"that there is no such thing as constitutional resistance." Turn and twist the argument as much as you please, the conclusion is inevitable. Let us, then, gravely inquire if this be a Government of the people collectively. Mr. Webster says it is; and what is of more importance, Chief Justice Marshall and the Supreme Court say so likewise. This is high authority, Mr. Editor—and he who despises it has more rashness than discretion.

But the authority is not conclusive, and we will, therefore, examine the position.

"We, the People"—upon these words in the Constitution turns the whole question. What do these words mean? The people as composing one body? Or the people as composing thirteen Sovereignties? It is very clear from "the Federalist," that Alexander Hamilton understood the words in a different sense from Mr. Webster—an able writer in the Mercury has shown this. I now undertake to show that the most strenuous advocates of the adoption of the Constitution understood "We, the People," as meaning the people of thirteen Sovereignties; and this is the true and only meaning.

No person will dispute the following proposition: In the making of a treaty or compact, if one of the contracting parties object to a phrase or term in the instrument because it means the aggregate, and the other party obviates the objection by declaring that it means the parts, and upon this interpretation the treaty is concluded, that interpretation shall prevail.

Now this is precisely the case with the Federal Constitution. When that instrument was submitted to the Virginia Convention, Patrick Henry, with a keen-eyed vigilance regarded every phrase. Forcibly struck with the expression, "We, the People," in the first clause of the Constitution, he indignantly asks, what right had the framers of that instrument to say "We, the People," instead of "We, the States." "States, (says Mr. Henry) are the characteristics and the soul of a Confederacy. If the States be not the agents of this compact, it must be one great Consolidated, National Government of the people of all the States."

Mr. Madison, who had been a member of the Federal Convention, and at that time was a member of the State Convention, alarmed at this objection, assures Mr. Henry that the expression, "We, the People," which had roused the ire of that gentleman, meant nothing more nor less than the people of the Sovereign States. "Who (says Mr. Madison) are the parties to the Government? The people—but not the people as composing one great body; but the people as composing thirteen Sovereignties."

Mr. Editor—can words be more express. The people, says Mr. Madison—but the people composing thirteen Sovereignties, not the people as composing one great body. Thus interpreted, Virginia assents, and the Constitution is adopted. Mr. Madison then goes into a train of reasoning to convince Mr. Henry that it was impossible the people as composing one body, could have been intended. "Were it so (says Mr. Madison) the assent of a majority of the people would be sufficient for its establishment, and as a majority had adopted it already, the remaining States would be bound by the act of the majority, even if they reprobated it." Thus much for the opinion of great men.

Mr. Editor, much has been said and written upon this subject—yet darkness hangs upon it. Permit me to show, and pardon my presumption when I assert, that this cannot be a Government of the

people as composing one great body. Nay more—the thing is impossible, even if the Constitution itself had exprsssly declared it.

The Federal Government is allowed to be the result of the compact. To every compact there must be parties; but in an original compact, every one of the parties must have assented to the formation of the compact, or he is not bound by it. Thus: Twenty men collect to form a copartnership or government—fifteen agree—five refuse to join—what is the consequence? The five who refuse are not members of the copartnership, or bound by its terms. If then, the people, in the collective sense, formed the Government of the United States, each and every man must have assisted, or it was not a Government for those who did not assent. But so far was this from being the case with the Federal Government, that a large part of the people did refuse their assent. *Nay more:* It might have so happened that a majority of the people might have dissented, and yet the Government would have been formed. The truth is, that the assent of the people in their collective capacity is not necessary to formation of a Federal Government—States and Sovereign Powers are the necessary agents of this kind of Government. *Again:* If this be a Government of the people in their collective capacity, it follows that they must have been without any Government at the time they formed the Federal Government. For nothing is clearer than the proposition, that the people under one Government have no right to enter into alliances or confederations. They can only act through their Government. The people of the United States cannot meet and form an alliance with other powers, because there is a Government for this purpose. It is however admitted that the people were under State Governments when the Constitution was adopted. Those State Governments had their own Constitutions, and the people by those very Constitutions had parted with those original or natural rights which enabled them to enter into leagues and covenants. The State Governments could enter into leagues or confederations, acting either through their Legislatures or Conventions; but upon every principle it is utterly impossible, the people *as such*, could have so done, unless they were absolved from the State Governments.

Mr. Editor—the question is momentous—and I say unto the people, take heed, for you will be called to solve it.

LUCIUS.

Charleston, March 20, 1830.